

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI**

**FILED**  
APR 30 2007  
ADMINISTRATIVE HEARING  
COMMISSION

**DOUGLAS M. OMMEN, Director,** )  
**Missouri Department of Insurance,** )  
**Financial Institutions and Professional** )  
**Registration,** )

**Petitioner,** )

**vs.** )

**MICHAEL G. GRIMES,** )

**Respondent.** )

**Case No.: 06-1352 DI**

0605122212C

**PETITIONER'S BRIEF**

Pursuant to the Commission's Order dated April 4, 2007, Douglas M. Ommen, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, hereby submits the following Proposed Findings of Fact and Conclusions of Law.

**FACTS**

1. Petitioner is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, whose duties include, pursuant to RSMo Chapters 374 and 375, the regulation, supervision, and discipline of licensed insurance producers.

2. The Missouri Department of Insurance, Financial Institutions and Professional Registration ("department") issued a producer license to Michael G. Grimes ("Respondent") on May 30, 1978 (license number PR 135825). Respondent's producer license is set to expire on May 30, 2008. *AHC Transcript at page 19 and Exhibit 1.*

3. The Commission has jurisdiction over this Complaint pursuant to § 621.045, RSMo (Supp. 2005).

4. On January 3, 2007 Petitioner filed an amended complaint seeking cause to discipline Respondent's license pursuant to § 375.141.1(2), (5), (7), and (8), RSMo (Supp. 2005).

5. On or about February 13, 2007, Respondent filed an answer to Petitioner's first amended complaint, denying all allegations except those included in paragraphs 1 – 3 of the complaint.

6. The Commission held a hearing on the matter on February 20, 2007. Petitioner presented evidence in support of the amended complaint. Respondent was also present, personally and represented by counsel, and presented evidence.

7. At all times relevant to Petitioner's complaint, Respondent was, and continues to be, licensed as an insurance producer in the State of Missouri. *AHC Transcript at page 19 and Exhibit 1.*

### **ARGUMENT**

8. The substantial and competent evidence presented in this matter demonstrates that the Director has established cause to discipline the license of Michael G. Grimes pursuant to § 375.141.1(2), (5), (7), and (8), RSMo (Supp. 2005).

9. The substantial and competent evidence in the record establishes that Respondent has failed to report administrative action taken against him by another governmental agency in this state within thirty (30) days of the final disposition of the matter as requires by § 375.141.6, RSMo (Supp. 2005), a violation of the insurance laws of Missouri, and grounds for discipline of Respondent's insurance license pursuant to § 375.141.1(2), RSMo (Supp. 2005).

In March of 2005 Respondent was the subject of an administrative action with the Securities Division of the Secretary of States' office. *AHC Transcript at page 20 and Exhibit 2.* In March of 2005, Respondent entered into Consent Order No. AP-05-01 with the Missouri Commissioner of Securities. The Consent Order stipulated, inter alia, that Respondent provided investment advice to Missouri residents without being registered as an investment adviser representative. As a result of this administrative action, Respondent consented to, inter alia, being prohibited from offering investment advice, and from applying for registration as a securities agent or investment adviser representative in Missouri for five (5) years. Respondent also paid twenty-seven thousand, five hundred dollars (\$27, 500.00) to the Secretary of State's Investor Education and Protection Fund. *Exhibit 2.* Respondent failed to report this administrative action to the department within thirty (30) days of the final disposition of the matter as required by § 375.141.6, RSMO (Supp. 2005). *AHC Transcript at page 22.* Such failure is a ground for discipline of his insurance license pursuant to § 375.141.1(2), RSMo (Supp. 2005).

10. The substantial and competent evidence in the record establishes that Respondent made assertions, representations or statements with respect to the business of insurance that were untrue, deceptive or misleading, an unfair trade practice defined by § 375.936(4), RSMo (2000) and prohibited by § 375.934, RSMo (2000). Further, the substantial and competent evidence establishes that Respondent made such assertions, representations or statements in conscious disregard of §§ 375.930 to 375.948, RSMo (2000) or of any rules promulgated under those sections, or with such frequency to indicate a general business practice to engage in that type of conduct. Such conduct is grounds for discipline of Respondent's insurance producer license pursuant to § 375.141.1(7), RSMo (Supp. 2005).

On or about February 28, 2004, Respondent affiliated with Triumph Marketing, LLC, a field marketing organization that completed insurance appointment contracts on Respondent's behalf. *Exhibit 3.* Respondent authorized Triumph Marketing "to affix or append a facsimile" of his signature to insurance appointment contracts. Further, Respondent affirmed that he had "read and reviewed the documents" to which his authorized signature was to be affixed. *Exhibits 3 and 3.1.* Respondent provided a sample insurance appointment application to Triumph Marketing that included the notation: "PLS USE THIS AS GUIDE TO FILL IN REST OF DOCUMENTS – BEST REGARDS M.G.G." *AHC Transcript at page 27 and Exhibit 3.2.* The sample insurance appointment application provided by Respondent contained minimal background questions that did not inquire extensively into Respondent's regulatory or administrative history. *Exhibits 3 and 3.2.* When Julie Hackett, president of Triumph Marketing, asked Respondent about his regulatory history, he advised her that he had previously paid a fine in relation to his securities license. *Exhibit 3.*

Between February and July of 2004, and in accordance with Triumph Marketing procedures, Respondent signed and dated blank insurance appointment applications, or authorized his signature to be affixed to such applications. Respondent further authorized Triumph Marketing personnel to complete the applications using the previously provided insurance appointment application as a guide. *Exhibits 3 and 3.1.*

Prior to signing or authorizing signatures on the insurance appointment applications, Respondent failed to disclose the following administrative and/or regulatory actions to Triumph Marketing:

- a. Consent Order No. AO-98-03 signed by Respondent and the Missouri Commissioner of Securities in July of 1998. The Consent Order stipulated, among other things, that

Respondent, while a registered securities agent, promoted himself as the author of a book entitled "The Retirees Complete Guide to the Secrets of a Secure and Peaceful Retirement". The front cover of the book identified Respondent as the author and the back cover contained a photograph of Respondent and biographical information under the heading "Meet the Author". Respondent later submitted a statement to the Securities Division that he had "purchased the right to use the book" from a company in Naperville, Illinois. The Consent Order further stipulated that such activity by Respondent was an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person. Respondent consented to, among other things, not use his name as the author of the book and paid ten thousand dollars (\$10,000.00) to the Secretary of State's Investor Education Fund;

- b. Consent Order No. AO-00-20 signed by Respondent and the Missouri Commissioner of Securities in November of 2000. The Consent Order stipulated, among other things, that Respondent made unsuitable securities investment recommendations to an inexperienced investor resulting in financial losses. The Consent Order further stipulated that Respondent engaged in a dishonest or unethical practice in the securities industry. Respondent consented to, among other things, be subject to special supervision by any broker-dealer firm for which Respondent might seek registration. Pursuant to the Consent Order, Respondent paid fifteen thousand dollars (\$15,000.00) restitution to the investor, and paid one thousand dollars (\$1,000.00) to the Secretary of State's Investor Education Fund;

- c. In March of 2001, Respondent signed a letter of Acceptance, Waiver and Consent from NASD (National Association of Securities Dealers) Regulation, Inc. The letter stipulated, among other things, that Respondent made unsuitable investment recommendations regarding mutual fund shares inconsistent with just and equitable principles of trade in violation of NASD Conduct Rules. Respondent consented to, among other things, the imposition of a thirty (30) day suspension of his securities license and paid a fine of thirty thousand dollars (\$30,000); and
- d. In December of 2002, the Certified Financial Planner (CFP) Board of Standards, Inc. determined that Respondent had, among other things, engaged in a pattern of misrepresentation, made unsuitable investment recommendations, failed to disclose material facts and the risks associated with certain investments, and failed to disclose several matters to the CFP Board as required. After a hearing, the CFP Board of Professional Review permanently revoked Respondent's right to use the CFP certification marks.

*Exhibits 3, 5, 6, 7, and 8.*

As a result of Respondent's failure to fully advise Triumph Marketing of his past administrative and/or regulatory history, at least ten (10) insurance appointment applications, which Respondent signed or to which his authorized signature was affixed, contained untrue, deceptive or misleading statements. *Exhibits 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, and 3.12.*

On or about January 4, 2006, Ronald Harrod, an investigator for Petitioner, informed Ms. Hackett of the extent of Respondent's regulatory history. *Exhibit 3.* Shortly thereafter, Ms. Hackett

sent Respondent a letter notifying him that Triumph Marketing was terminating all remaining personal and corporate contracts with all insurance carriers. *Exhibit 3.*

On or about February 28, 2004 Respondent personally signed, dated, and completed an Allianz insurance appointment application for Preferred Financial Brokers, a field marketing organization separate from Triumph Marketing, LLC. *AHC Transcript at page 52 and Exhibit 4.* The Allianz application included questions about Respondent's administrative and regulatory history. *AHC Transcript at pages 52-53 and Exhibit 4.* On the Allianz application, Respondent indicated that he had never been the subject of a penalty, inquiry or action by a regulatory agency, nor had he ever had a license refused/suspended/revoked or currently restricted or under investigation. *AHC Transcript at page 53 and Exhibit 4.* Respondent's assertions with respect to subparts two (2) and (4) of the first background question on the Allianz application are untrue, deceptive or misleading because Respondent had previously been the subject of a penalty, inquiry or action by a regulatory agency and Respondent had had a license refused, suspended, revoked, or currently restricted. *AHC Transcript at page 53 and Exhibits 4, 5, 6, 7 and 8.*

11. The substantial and competent evidence in the record establishes that Respondent's actions demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere, grounds for discipline of Respondent's insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2005).

20 CSR 700-1.147 implements § 375.141.1(8), RSMo (2000) with respect to the offer, sale or exchange of variable life and variable annuity products. 20 CSR 700-1.147 states, in part:

Each individual producer licensed to sell variable life and variable annuity products shall be supervised by a member of the National Association of Securities Dealers (NASD) . . .

Consent Order No. AP-05-01 prohibits Respondent from being affiliated with an NASD firm until March of 2010. *AHC Transcript at pages 57 – 59 and Exhibit 10.* This prohibition bars his compliance with 20 CSR 700-1.147 and subjects him to discipline pursuant to § 375.141.1(8), RSMo (Supp. 2005).

12. The substantial and competent evidence in the record establishes that Respondent engaged in an act, practice, or course of business which operates as a fraud or deceit upon any person in violation of § 375.144, RSMo (Supp. 2005), grounds for discipline of Respondent's insurance producer license pursuant to § 375.141.1(2), RSMo (Supp. 2005).

On or about November 6, 2006, Respondent sent a solicitation letter to one or more of his Missouri clients indicating that he is "properly licensed in .... Variable Annuities." *AHC Transcript at pages 56-59 and Exhibit 10.* Respondent's statement in a letter to Missouri consumers that he is "properly licensed in . . . Variable Annuities" acts as a fraud or deceit upon those who read it because the plain meaning of the words "properly licensed" implies that Respondent is in full compliance with applicable insurance laws and regulations.

On or about November 6, 2006 Respondent was not allowed to affiliate with an NASD member. *Exhibit 2.* When Respondent sent the solicitation letter, he engaged in the offer, sale or exchange of variable life or variable annuity products without affiliating with an NASD member. Such conduct subjects him to discipline for demonstrating incompetence, untrustworthiness or financial responsibility, pursuant to § 375.141.1(8), RSMo (Supp. 2005). Stating that he is "properly



licensed in . . . Variable Annuities” while contemporaneously engaging in activities explicitly subjecting himself to discipline operates as a fraud or deceit on any person who reads the statement.

**WHEREFORE**, based on the foregoing, the Director respectfully requests that this Commission make findings of facts and conclusions of law stating that Petitioner has established cause to discipline the license of Respondent, Michael G. Grimes.

Respectfully submitted,

A handwritten signature in cursive script that reads "Tamara Wallace". The signature is written in black ink and is positioned above the printed name.

Tamara A. Wallace

Missouri Bar # 59020

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**ATTORNEY FOR PETITIONER**

Douglas M. Ommen, Director

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a true and correct copy of the foregoing was mailed first class, with sufficient postage attached, via the United States Postal Service on this 30<sup>th</sup> day of April, 2007, to:

Steven W. Koslovsky  
Attorney for Respondent, Michael G. Grimes  
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Tamara Wallace